Enforcement of intellectual property rights

2003/0024(COD) - 30/01/2003 - Legislative proposal

PURPOSE : to harmonise the legislation of the Member States on the means of enforcing intellectual property rights in the Internal Market and to establish a general framework for the exchange of information and administrative cooperation. CONTENT : the protection of intellectual property rights is an essential element for the success of the internal market. The protection of intellectual property is important not only for promoting innovation and creativity but also for developing employment and improving competitiveness. The means of enforcing these rights are of paramount importance for the success of the single market. In the Member States, and despite the provisions of the TRIPS Agreement, there are still major disparities as regards the means of enforcing intellectual property rights. For instance the arrangements for applying provisional measures, which are used in particular to safeguard evidence, the calculation of damages, or the arrangements for applying injunctions, vary widely from one Member State to another. In some Member States, there are no measures and procedures such as the right of information and recall, at the infringers' expense, of the goods placed on the market. The current disparities also lead to a weakening of the substantive law on intellectual property and to a fragmentation of the internal market in this field. The main provisions of this proposal are as follows: - the scope of the directive is defined as widely as possible in order to encompass all the intellectual property rights covered by Community provisions in this field; - the measures and procedures will be such as to remove from those responsible for an infringement the economic benefits of that infringement; - the persons entitled to apply for an application of the measures and procedures are first and foremost the right holders and their representatives. Member States must also provide for rights management or professional defence bodies to be entitled to apply for the application of the measures and to initiate legal proceedings of the defence of those rights; - the proposal adopts Rule 15 of the Bernie Convention, which establishes the presumption whereby the author of a literary or artistic work is regarded as such if his name appears in the work. - the evidence protection measures provide that, even before an examination of the merits of a case have started, the right holder may invoke a procedure involving seizure if there is a risk that evidence may be destroyed. Physical seizure may be subject to the lodging of a guarantee to ensure compensation for the defendant in the event of an unjustified application. The applicant has 31 calendar days to initiate substantive proceedings, failing which the seizure is null and void. This measure is modelled on the Anton Pillar order in England and Wales and the saisie-contrefacon in France; - the right holder has the right to certain prescribed information on the infringing goods and on the networks for their distribution; - there are a number of provisions with regard to provisional measures which competent authorities may take. The measures are of paramount importance, since in almost all cases, it is in the interest of the right holder to take rapid action; - in certain cases, and particularly if the right holder demonstrates circumstances likely to threaten the recovery of damages, the courts may order the precautionary seizure of property, including the blocking of the defendant's bank accounts and other assets. This is modelled on the law of England and Wales known as the Mareva injunction; - damages are intended to compensate for the prejudice suffered because of an infringement committed intentionally or by mistake. The level and calculation of damages are proposed as part of the legislation.